

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
Connect America Fund) WC Docket No. 10-90

PETITION FOR WAIVER

IAMO Telephone Company, Inc. (“IAMO”), by its attorney and pursuant to Section 1.3 of the Commission’s Rules, hereby requests waiver of any relevant Commission or Wireline Competition Bureau (“Bureau”) practice or policy that would preclude acceptance and consideration of its attached letters, dated October 31, 2016, electing to accept model-based support and committing to satisfy associated service obligations for its Iowa study area (Study Area Code 351206; Attachment A) and its Missouri Study Area (Study Area Code 421206; Attachment B).

IAMO submitted both letters via separate emails to the Bureau on Monday, October 31, 2016 – the day prior to the Bureau’s designated November 1, 2016 deadline. Whereas both letters were properly addressed to the Bureau at the designated “ConnectAmerica@fcc.gov” electronic mail address, an apparent inadvertent typographical error in the email address lines for both letters indicated “ConnectAmerican@fcc.gov” instead. The Commission’s fcc.gov server or network did not “bounce” the emails back, or otherwise notify IAMO that “ConnectAmerican” was not an appropriate address or destination within the fcc.gov network, and that its ACAM acceptance letters were apparently wandering undelivered and undeliverable somewhere in the Commission’s website or elsewhere in cyberspace. IAMO did not realize that

there was any problem until Thursday, November 3, 2016, when it noted that it was not included on the Public Notice of carriers accepting model support.¹

Legal and Procedural Background

Section 1.3 of the Rules permits the Commission's rules to be waived for good cause shown. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). In addition, the Commission may take into account considerations of hardship, equity, and the effective implementation of public policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

In the present situation, there does not appear to be any specifically applicable Commission rule. Rule 54.311 is the regulation that addresses "Connect America Fund Alternative Connect America Cost Model Support." Whereas Rule 54.311(a) specifies voluntary election of CAF-ACAM support on a state-level basis, and states that rate-of-return carriers not making the election continue to receive support from other high-cost support mechanisms, it does not specify, describe or reference a particular election procedure, mechanism or deadline. None of the other subsections of Rule 54.311 deal with the CAF-ACAM election process.

In the March 30, 2016 *Order*² in which it adopted Rule 54.311, the Commission specified an Election Process for CAF-ACAM support in paragraphs 64 through 69. That process includes statements in paragraph 67 that: (a) carriers "should submit" their acceptance letters to the Bureau at ConnectAmerica@fcc.gov; (b) a carrier "must submit" a letter signed by an officer of

¹ Public Notice (*Wireline Competition Bureau Announces Results of Rate-Of-Return Carriers That Accepted Offer of Model Support*), WC Docket No. 10-90, DA 16-1246, released November 2, 2016.

² *In the Matter of Connect America Fund et al.*, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, WC Docket Nos. 10-90 and 14-58 and CC Docket No. 01-92, FCC 16-33, released March 30, 2016.

the company containing the required election confirmation and associated service obligation commitment; and (c) if a carrier “fails to submit” any final election letter by the close of the 90-day election period, it will be deemed to have declined model-based support.

The Bureau used virtually identical language in its Public Notice (*Wireline Competition Bureau Announces Support Amounts Offered to Rate-Of-Return Carriers to Expand Rural Broadband*), WC Docket No. 10-90, DA 16-869, released August 3, 2016. On page 3 thereof, the Bureau reiterated that (a) carriers “should submit” their election letters to the Bureau at ConnectAmerica@fcc.gov; (b) a carrier “must submit” a letter signed by an officer of the company containing the required election confirmation and associated service obligation commitment; and (c) if a carrier “fails to submit” any final election letter by the November 1, 2016 deadline, it will be deemed to have declined model-based support.

Inadvertent typographical or clerical errors like typing “ConnectAmerican” rather than “ConnectAmerica” are routinely permitted to be corrected in judicial and regulatory proceedings. For example, trial courts are routinely allowed to correct clerical errors in their judgments without further proceedings, see, e.g., *Machniak v. Com.*, 351 S.W. 3d 648 (Kentucky, 2011), and administrative agencies are routinely required to correct clerical errors in procurement documents, *BC Peabody Construction Services, Inc.*, No. 13-378C (U.S. Ct. Claims 2013). The Commission itself frequently issues Errata correcting typographical and clerical errors in its orders, and has long allowed applicants for various licenses to correct clerical errors without dismissal, waiver, penalty, or other further formal proceedings or actions. See, e.g., *Singleton v. FCC*, 952 F2d 1444 (D.C. Cir. 1992) (Commission decision to allow cellular applicant to correct erroneous coordinates and elevations was affirmed by court); *Ram Communications of Michigan, Inc.*, 3 FCC Rcd 3101 (1988) (applicant allowed to correct typographical error in cellular

application); *Timothy Roper*, 4 FCC Rcd 4070 (1989) (application permitted to be amended to correct technical exhibits and errors in cost figures); and *James K. Larrington Corporation*, 2 FCC Rcd 1529 (Comm. Carr. Bur. 1987) (applicant allowed to correct typographical errors in data needed to calculate maximum radiating power). In the universal service area, the Bureau has permitted E-Rate applicants to submit corrections of clerical and ministerial errors in their FCC Form 470 and FCC Form 471 applications for a significant period after the applications are filed – specifically, until funding commitment decision letters are issued. *In the Matter of Schools and Libraries Universal Service Support Mechanism*, Order, CC Docket No. 02-6, FCC 11-60, released April 14, 2011.

The Commission’s Memorandum Opinion and Order in *Atlanta Trunking Associates, Inc. and MAP Wireless, L.L.C.*, FCC 97-154, released May 6, 1997, is particularly apposite here. There, wireless auction rules were waived to excuse applicants from bid withdrawal penalties which were incurred when auction participants had withdrawn excessive and unintended bids that had been made as a result of typographical errors and/or clerical mistakes (in particular, leaving an extra zero in bids, causing them to be ten times more than intended). The Commission decision relied in significant part upon a design flaw in the remote bidding system wherein a zero that was placed in the bid submission field appeared to have been at least partially responsible for the excessive bids.

The IAMO Election Letters Should Be Accepted

IAMO’s Iowa and Missouri CAF-ACAM attached election letters were submitted on Monday, October 31, 2016 – a day before the Bureau’s stated November 1, 2016 deadline. Both letters were properly addressed on their face to the Bureau at ConnectAmerica@fcc.gov, and made the required election confirmation and associated service obligation commitment. As of

approximately 3:12 PM Central on October 31, 2016, IAMO had submitted the letters by separate emails to the Bureau, and thought that it had elected model-based support in both Iowa and Missouri.

Unfortunately, the address on the actual transmitting emails was “ConnectAmerican@fcc.gov” rather than “ConnectAmerica@fcc.gov.” It is not clear whether the IAMO employee preparing the email erroneously entered the extraneous “n,” or whether the email software automatically added the “n” on its own and the IAMO representative failed to notice.³ Whatever the cause, the email address was inadvertently incorrect and was not noticed to be such by IAMO. Moreover, unlike many email systems, the Commission’s email system does not appear to return or “bounce back” emails sent to fcc.gov with addresses that are not completely correct and current. Hence, IAMO submitted its election letters to the fcc.gov network in timely fashion on October 31, 2016, but had no inkling that the Bureau was unaware of them until it saw the November 2, 2016 Public Notice on November 3, 2016. Had its emails bounced back promptly, IAMO could have resubmitted its election letters to the correct email address in timely fashion later on October 31, 2016, or on November 1, 2016.

IAMO can make a reasonable legal argument that it “submitted” its election letters to the fcc.gov network in timely fashion on October 31, 2016, and that there is nothing in the rules, orders and public notices referenced above that expressly requires anything more than the carrier’s “submission” of the letters by November 1, 2016. And even if we do not want to quibble over the meaning of “submit,” the facts are that the Bureau did not actually “receive” or “become aware” of the letters due to: (1) an inadvertent typographical error – the extraneous “n” – of the type routinely excused and allowed to be corrected; and (2) the apparent lack of a

³ As is common practice when sending similar emails, the IAMO representative prepared and sent the first email, and then resent it by changing the name of the state and substituting the appropriate election letter. The incorrect “ConnectAmerican” address remained unnoticed in the second email.

“bounce back” feature in the fcc.gov network that would have alerted IAMO to the typographical error in plenty of time to have corrected it.

Given that no Commission regulation appears to address or govern the present situation, IAMO is not certain what provision needs to be waived in order for its attached ACAM election letters to be accepted and included in the ACAM Path process.

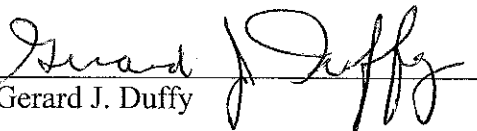
If a waiver of the November 1, 2016 deadline listed in the August 3, 2016 Public Notice is required, the foregoing facts and circumstances make strict compliance with that deadline inconsistent with the public interest. Whereas IAMO is aware that the CAF-ACAM is presently over-subscribed, allowing one more rural local exchange carrier with two small study areas into model-based support will not significantly or adversely impact the future universal service support of either the other companies electing CAF-ACAM support or those companies remaining on the Rate of Return Path. IAMO’s two study areas together receive only \$1,788,524 in total annual ACAM support (\$625,799 in Iowa and \$1,162,725 in Missouri), and only \$46,094 of this support constitutes incremental support above their 2015 legacy support (\$4,841 in Iowa where 2015 legacy support was \$620,958, and \$41,253 in Missouri where 2015 legacy support was \$1,121,472).⁴ IAMO has expended significant effort and expense to explore and evaluate model-based support and the accompanying broadband build-out obligations, and had decided to take a major step that the Commission and Bureau have long encouraged – to leave rate-of-return regulation for incentive-based regulation. Its efforts and decisions should not be thwarted due to an inadvertent typographical error, and the absence of a “bounce back” feature in the Commission’s email system. Finally, given that the Bureau is accepting comments until November 14, 2016 on how to address the current ACAM over-subscription issue, prompt

⁴ In fact, IAMO’s Missouri study area legacy support is estimated to increase to \$1,363,992 in 2016 – which would mean that its annual CAF-ACAM support would entail a decrease of \$201,267 from its legacy support.

inclusion of IAMO in the group of companies electing CAF-ACAM support will not delay implementation of the ACAM Path.

Therefore, good cause having been shown, the Bureau is respectfully requested to waive its November 1, 2016 deadline, if necessary, or to take whatever alternative steps are required to permit IAMO's Iowa and Missouri study areas to participate in the CAF-ACAM support mechanism pursuant to their attached ACAM election letters.

Respectfully submitted,
IAMO TELEPHONE COMPANY, INC.

By: 
Gerard J. Duffy

Its Attorney

Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP
2120 L Street, NW (Suite 300)
Washington, DC 20037
Phone: (202) 659-0830
Email: gjd@bloostonlaw.com

Dated: November 4, 2016

ATTACHMENT A

Gerard J. Duffy

From: Tim Morrissey <tmorrissey@fwainc.com>
Sent: Thursday, November 03, 2016 3:50 PM
To: Gerard J. Duffy
Subject: FW:
Attachments: 20161031151114223_0001.pdf

Here is the acceptance letter for IAMO- Iowa

Tim

-----Original Message-----

From: Jack [mailto:jjones@iamotelephone.com]
Sent: Monday, October 31, 2016 3:14 PM
To: Tim Morrissey <tmorrissey@fwainc.com>
Subject: FW:

Sent.

-----Original Message-----

From: Jack
Sent: Monday, October 31, 2016 3:12 PM
To: 'ConnectAmerican@fcc.gov'
Subject: FW:

Please see attached file for the signed document.

October 31, 2016

Filed via ConnectAmerica@fcc.gov

Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

RE: IAMO Telephone Company, Inc. - Iowa Study Area (SAC: 351206)
WC Docket No. 10-90

Attention: Wireline Competition Bureau

Dear Ms. Dortch:

Pursuant to Public Notice ("Wireline Competition Bureau Announces Support Amounts Offered to Rate of Return Carriers to Expand Rural Broadband"), DA 16-869, released August 3, 2016, and Public Notice ("Wireline Competition Bureau Releases Report for Alternative Cost Model With Minor Corrections"), DA 16-929, released August 15, 2016, IAMO Telephone Company, Inc. (IAMO), a rural local exchange carrier serving a single Iowa study area (SAC 351206) and a single Missouri study area (SAC421206), accepts the offer of model-based support contained in these Public Notices for its Iowa study area.

Specifically, IAMO accepts the offer of \$625,799 in model-based support annually for a 10-year term contained in both Report 7.1 of the August 3, 2016 Public Notice and Report 8.1 of the August 16, 2016 Public Notice.

IAMO commits to satisfy applicable specific service obligations identified in Report 7.2 of the August 3, 2016 Public Notice and Report 8.2 of the August 16, 2016 Public Notice. IAMO agrees: (a) to offer 25/3 Mbps broadband service to 83 locations within the fully funded portions of its service area; (b) to offer 10/1 Mbps broadband service to 249 locations within the fully funded portions of its service area; and (c) to offer 4/1 Mbps broadband service to 35 locations within the partially funded portions of its service area.

I hereby certify that I am an officer of IAMO, and that I am authorized to make this election on behalf of IAMO.

Sincerely,

Jack Jones
General Manager
P.O. Box 368
Coin, IA 51636
Telephone: (660) 254-2345
E-mail: jjones@iamotelephone.com

-----Original Message-----

From: iamo@iamotelephone.com [mailto:iamo@iamotelephone.com]

Sent: Monday, October 31, 2016 2:11 PM

To: Jack

Subject:

This E-mail was sent from "RNPEA10A2" (Aficio MP C2050).

Scan Date: 10.31.2016 15:11:14 (-0400)

Queries to: iamo@iamotelephone.com

P.O. Box 368
104 Crook Street
Coin, Iowa 51636

IAMO

Telephone Company

712-583-3232
fax 712-583-3202

October 31, 2016

Filed via ConnectAmerica@fcc.gov

Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

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WC Docket No. 10-90**

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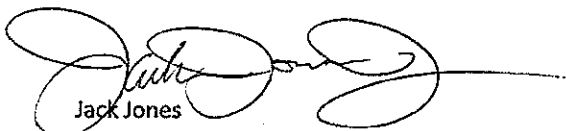
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ATTACHMENT B

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Attachments: 20161031151131818_0001.pdf

Here is the acceptance letter for IAMO - Missouri See EMAIL below for the EMAIL sent to file the information.

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To: Tim Morrissey <tmorrissey@fwainc.com>
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Marlene Dortch, Secretary
Federal Communications Commission
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Washington, DC 20554

RE: IAMO Telephone Company, Inc. - Missouri Study Area (SAC: 421206)
WC Docket No. 10-90

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Dear Ms. Dortch:

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Specifically, IAMO accepts the offer of \$1,162,725 in model-based support annually for a 10-year term contained in both Report 7.1 of the August 3, 2016 Public Notice and Report 8.1 of the August 16, 2016 Public Notice. IAMO commits to satisfy applicable specific service obligations identified in Report 7.2 of the August 3, 2016 Public Notice and Report 8.2 of the August 16, 2016 Public Notice. IAMO agrees: (a) to offer 25/3 Mbps broadband service to 197 locations within the fully funded portions of its service area; (b) to offer 10/1 Mbps broadband service to 593 locations within the fully funded portions of its service area; and (c) to offer 4/1 Mbps broadband service to 68 locations within the partially funded portions of its service area.

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RE: IAMO Telephone Company, Inc. – Missouri Study Area (SAC: 421206)
WC Docket No. 10-90

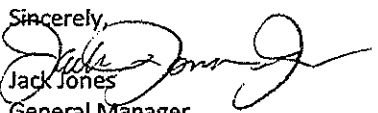
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